

KARNATAKA INFORMATION COMMISSION
Gate No.2, 2nd Floor, M.S.Building, Dr. B.R.Ambedkar Veedhi, Bangalore – 560 001.

Dated the 1st day of July, 2013

Present:- Sri. J S Virupakshaiah,
State Information Commissioner,

CASE NO. KIC 3498 PTN 2012
(Complaint under Section 18(1) of the RTI Act)

BETWEEN:

Sri Umapathi S,
Tirumala Nivas,
Kirosker Layout,
Hesserghatta Main Road,
Bangalore Urban – 560073.

.. Complainant

AND :

1) PIO & The Secretary,
Bangalore Turf Club,
P.O. Box - 5038,
Race Course Road,
Bangalore – 560 001.

.. Respondent

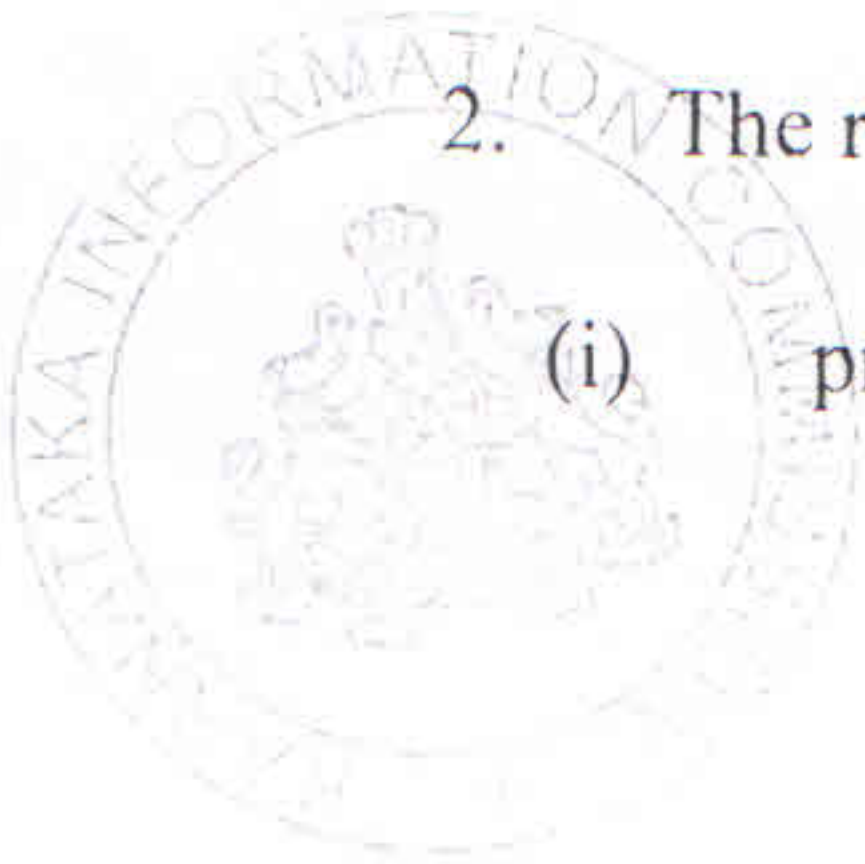
ORDER ON THE COMPLAINT FILED UNDER SECTION 18(1) OF RTI ACT

1. Brief Fact of the case.

The complainant sent an application through e-mail dated 14-02-2012 to the respondent under Section 6(1) of the RTI Act, seeking certified copy of list of records duly catalogued and indexed and certified copy of information /booklet as required to be published under Section 4(1)(a) & 4(1)(b) of RTI Act, 2005. He has also requested for furnishing of the said information in the form of Compact Disk, if this information was in electronic form. As the information sought for has not been furnished, complaint dated 19-05-2012 is filed before the Commission under Section 18(1) of the RTI Act on 22-05-2012. The Commission issued summons to the parties and secured their presence.

2. The respondent filed objections stating that:

(i) provisions of RTI Act are not applicable to Bangalore Turf Club



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and therefore, this Commission has no jurisdiction to entertain the petition.

- (ii) BTC Ltd is a company incorporated under the provisions of the Companies Act engaged in carrying on the Sport of Horse Racing and the Club does not discharge or exercise any sovereign functions or duties and that Government has no control over the affairs and management of the Club.
- (iii) it has not received any contributions or funds from the Government and that it is not a 'State' as defined under the Constitution of India,
- (iv) it is not a body owned, controlled or substantially financed either directly or indirectly by funds provided by the State Government or any other Government,
- (v) it is a private Club whose affairs and management are governed by Memorandum and Articles of Association and the Rules of Racing and the Management is vested in the committee consisting of 14 members charged with the responsibility of overall control and management.
- (vi) In KIC.284 COM 2006 – Sri. M.R. Shyamsunder Vs Secretary, Bangalore Turf Club and KIC.233 COM 2006. This Commission has held that the respondent does not fall under the definition of the 'public authority' under the Right to Information Act.
- (vii) The Club holds the possession of the land by virtue of conditional grant and further, any concessional levy for the use of land by Club would in no manner amount to financing by the State Government either wholly or substantially.
- (viii) There is no duty cast upon the Club under the Act as 'public authority' to provide information.
- (ix) The decisions of Hon'ble High Court of Karnataka and High Court of Allahabad relied upon by the petitioner do not have any bearing to the present case, as the facts of the said cases are entirely different to the present case in hand.

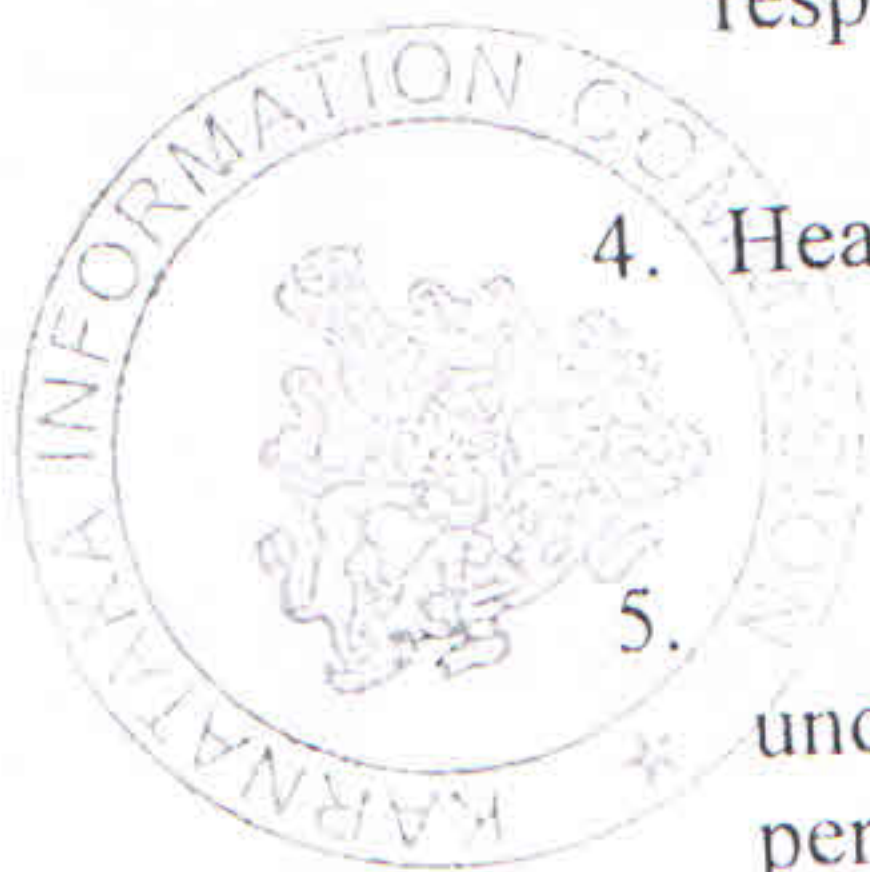
The respondent has produced memorandum and Articles of Association and copy of the order in KIC.284 COM 2006 – Sri. M.R. Shyamsunder Vs Secretary, Bangalore Turf Club.

3. The petitioner and the respondent produced documents in support of their respective claims and defenses.

4. Heard, perused the records and proceeded for order.

REASONS

5. In order to give finding about whether the respondent is a public authority under the RTI Act or not, the Section 2(h) of the RTI Act has to be carefully perused and see if the respondent comes within the said parameters of the



Section. In order to consider an organisation as public authority, it should be an authority or body or institution of self-government established or constituted—

- a) by or under the Constitution;
- b) by any other law made by Parliament;
- c) by any other law made by State Legislature;
- d) by notification issued or order made by the appropriate Government,
and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

6. In order to give a finding as to if the respondent is a Public Authority; there are various documents available in the file. Amongst them are (i) Memorandum of Articles of Association, (ii) the GOs, (iii) copies of lease agreements (iv) CAG Report etc.,

7. The Article 32 of Memorandum of Articles of Association clearly reflect that the committee shall consist of 14 members of whom 9 shall be stewards of the Club and 5 shall be committee members. 6 of the 9 stewards and 4 of the 5 committee members shall be elected by the Club members at the Annual General Body Meeting remaining 3 stewards and 1 committee member shall be nominated in a financial year by the Government of Karnataka. As per letter no. FD14/CRC2012 dated 05-09-2012, Government of Karnataka nominated 3 stewards and 1 committee member for the concerned year. Without limiting generality of the foregoing, they shall have power,

- a. to appoint Secretary as, such establishment has considered necessity for proper management of the Club,
- b. to appoint bankers, open bank accounts, raise or borrow, or secure the payment of any sums or sums of money for the purpose of the Club,
- c. to defray all expenses in connection with the race meetings, improvements etc.,
- d. subject to provisions of Section 293(i)(c) of the Companies Act to invest and deal with any moneys of the Club,
- e. to purchase, take on lease or otherwise acquire for the Club any property rights or privileges.....,
- f. to enter into negotiations and contracts, rescind and vary contracts and execute and do all such acts, deeds and things in the name of and on behalf of the Club,



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- g. to refer any claim or demands by or against the Club to Arbitration,
- h. to authorise the Secretary or any other officer of the Club to institute, conduct, defend, compound or abandon any legal proceedings by and against the Club.....,
- i. to give monitory assistance, donations.....,
- j. to appoint one or more persons as Patrons or vice-Patrons of the Club....,
- k. to elect Club and Stand Members.....,
- l. to elect 2 Club Members annually to represent Club.....,
- m. to frame Rules and regulations for conducting of racing.....,
- n. to draft or sanction any prospectus for racing under such Rules and Regulations and incur all such expenditure.....,
- o. to delegate any power or authority to sub-committees.....,
- p. to extend the privileges of using the Club houses....as may be determined by the Committee,
- q. to extend such courtesies and facilities to the Members of the Committee,
- r. to start and acquire Stud Farm or Farms anywhere...

8. The committee thus formed containing the representatives of the Government shall have control over the funds and on the properties of the Club (see Article 14 of Memorandum of Articles of Association). They shall also have the entire Management of, and control over the race course, stands and enclosures and they may make such regulations in respect thereto as they think proper except such as by those Articles require to be controlled by the stewards.

9. Apart from the above powers, the committee who have been nominated by the Government consists of 3 stewards and 1 committee member shall have various other powers reflected in the Article 40. The said committee, which consists of the members nominated by the Government, shall have the power to keep proper account of the income and disbursements of the Club from all sources etc., and as per Article 44 they have the power to determine about the regulation of accounts and books of the Club. Thus, it could be held that one of the requirements viz., control by the Government as per Section 2(1)(h)(ii) is fulfilled. The Government has granted huge concessions by way of indirect financing which is explained in the succeeding paragraphs and therefore Government has control over the Club. Thus, the ingredient of 'control by the government' is proved and has clearly established that the government is also participating in the working of the Club.



Coming to the one more requirement of the Section 2(h)(d)(ii) is concerned, the Commission inclines to peruse the documents available in the

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record. Firstly, land measuring 32,17,995 Sq.ft, where the Bangalore Race Course is existing was given on lease to the Bangalore Turf Club as per the lease agreement dated 09-09-1923 and except the collection of betting tax, entertainment tax and license fee, no other revenue was collected in respect of the land till GO No. FD 14 CRC67 dated 02-11-1968 was issued by the Government. In the aforesaid GO, lease amount of Rs. 50,000/- per annum was fixed and later it was enhanced to Rs. 1,00,000, 5,00,000, 30,00,000. However, on the request of the Turf Club to treat it on par with the KSCA or Golf Club as a sports activity, and modify the decision fixing the lease amount at Rs.30,000,00/- per year was considered by the government and issued the GO dated 05-09-2000 leasing from 01-01-1989 to 31-12-1999 and from 01-01-2000 to 31-12-2009 for lease amount of Rs.10,000,00/- per year and thereafter to increase @ 10% per year. Considering (a) the location of the land **in the heart of the Bangalore Metropolitan City**, (b) extent of **32,17,995 Sq.ft of land being leased FREE for 45 years** from 09-09-1923 to 02-11-1968, (c) and then at the rate of Rs 50,000/- per year i.e., **at a very meager rate of Re.0.015/-per sq ft**, and (d) then again at **a very meager rate of Re. 0.92 per sq. ft. per year for over a period of 21 years** from 01-01-1989 to 31-12-2009 (see CAG report), it is evident to note that the government has indirectly financed the Club. Thus, it could be held that another requirement of control by the Government as per Section 2(1)(h)(d) (ii) is fulfilled.

11. The decision of this Commission in KIC.284 COM 2006 – Sri. M.R. Shyamsunder Vs Secretary, Bangalore Turf Club is not binding and that apart the said decision appears to have been rendered in the absence of material documents reflecting the facts which are being taken up for discussion to decide the issue as to if the Club is a public Authority or not. On the other hand, the respondent has produced Memorandum and Articles of Association of Bangalore Turf Club Ltd and as reflected from it, nowhere it is stated that it is a private Ltd company having the private objects of carrying on the business of a race Club etc. That apart, the said decision is not binding on this Commission, as the principle relating to the ‘precedents’ and ‘binding’ is not applicable to decisions of the Information Commissions, as the Information Commissioner gives a final decision of his own and no appeal lies much less to the Full bench of this Commission .



12. In this context this Commission refers the following decisions of Honble High Courts of Delhi and Punjab & Haryana.

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Whether conditions (a) to (d) apply, S. Ravindra Bhat J, in his judgment dated 7th January, 2010, in WP(C) No. 876/2007 titled Indian Olympic Association Versus Veeresh Malik and others and other cases, has observed as under :-

"45. Now, if the parliamentary intention was to expand the scope of the definition "public authority" and not restrict it to the four categories mentioned in the first part, but to comprehend other bodies or institutions, the next question is whether that intention is coloured by the use of the specific terms, to be read along with the controlling clause 'authority ... of self government" and "established or constituted by or under" a notification. A facial interpretation would indicate that even the bodies brought in by the extended definition :

(i) "Body owned, controlled or substantially financed;

(ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government." are to be constituted under, or established by a notification, issued by the appropriate government. If, indeed, such were the intention, sub-clause (i) is a surplusage, since the body would have to be one of self government, substantially financed, and constituted by a notification, issued by the appropriate government. Secondly – perhaps more importantly, it would be highly anomalous to expect a 'non-government organization" to be constituted or established by or under a notification issued by the government. These two internal indications actually have the effect of extending the scope of the definition "public authority"; it is, thus, not necessary that the institutions falling under the inclusive part have to be constituted, or established under a notification issued in that regard. Another significant aspect here is that even in the inclusive part, Parliament has nuanced the term; sub-clause (i) talks of a "body, owned, controlled or substantially financed" by the appropriate government (the subject object relationship ending with sub-clause (ii). In the case of control, or ownership, the intention here was that irrespective of the constitution (i.e. it might not be under or by a notification), if there was substantial financing, by the appropriate government, and ownership or control, the body is deemed to be a public authority. This definition would comprehend societies, co-operative societies, trusts, and other institutions where there is control, ownership, (of the appropriate government) or



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substantial financing. The second class, i.e. non government organization, by its description, is such as cannot be "constituted" or "established" by or under a statute, or notification."

"46. The term "non-government organization" has not been used in the Act. It is a commonly accepted expression. Apparently, the expression was used the first time, in the definition of "international NGO" (INGO) in Resolution 288(X) of ECOSOC on February 27, 1950 as "any international organization that is not founded by an international treaty". According to Wikipedia [http://en.wikipedia.org/wiki/Nongovernmental organization](http://en.wikipedia.org/wiki/Nongovernmental_organization)..accessed on 28.12.2009 @ 19:52 hrs)

"...Non-governmental organization (NGO) is a term that has become widely accepted as referring to a legally constituted, non-governmental organization created by natural or legal persons with no participation or representation of any government. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status and excludes government representatives from membership in the organization. Unlike the term intergovernmental organization, "non-governmental organization" is a term in general used but is not a legal definition. In many jurisdictions these types of organization are defined as "civil society organizations" or referred to by other names..."

Therefore, inherent in the context of a "non-government" organization is that it is independent of government control in its affairs, and is not connected with it. Naturally, its existence being as a non-state actor, the question of its establishment or constitution through a government or official notification would not arise. The only issue in its case would be whether it fulfills the "substantial financing" criteria, spelt out in Section 2(h). Non-government organizations could be of any kind; registered societies, co-operative societies, trusts, companies limited by guarantee or other juristic or legal entities, but not established or controlled in their management, or administration by state or public agencies."



16. The term "substantially financed has also been interpreted in the same judgment and it has been held that 'majority' test is not appropriate to decide whether or not a

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non- Government organisation is substantially financed, directly or indirectly, by the appropriate Government. It has been explained that financing in percentage terms in relation to the total budget of the body is not important.

To quote :-

"60. This court therefore, concludes that what amounts to "substantial" financing cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is not "majority" financing, or that the body is an impermanent one, are not material. Equally, that the institution or organization is not controlled, and is autonomous is irrelevant; indeed, the concept of nongovernment organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform – or pre-dominantly performs – "public" duties, too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfillment plan. This view, about coverage of the enactment, without any limitation, so long as there is public financing,

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18. Earlier to this, a similar view was taken by the Punjab & Haryana High Court in his judgment dated 25.02.2008 in DAV College Trust and Management Society & Ors-Vs-Director of Public Instructions & Ors :-

"A perusal of the definition of 'public authority' shows that 'public authority' would mean any authority or body or institution established or constituted apart from other things by the notification issued by an order made by the appropriate Government. It is to include even anybody owned, controlled or substantially financed or non-Government Organisation substantially financed directly or indirectly by the funds provided by the appropriate Government. It is undisputed that the petitioners are receiving substantially grant-in-aid from the Chandigarh Administration. Once a body is substantially financed by the Government, the functions of such body partake the character of 'public authority'. The definition of expression public authority would include any organisation / body owned, controlled or substantially financed directly or in



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directly by funds provided by the Government or even the non-government organization which is substantially financed. The petitioner has claimed that they are getting only 45% grant-in-aid after admitting that initially the grant-in-aid paid to them was to the extent of 95 % which was given initially allowing the petitioner to build up its own infrastructure and reducing the grant-in-aid later would not result into an argument that no substantial grant-in-aid is received and, therefore, it could not be regarded as 'public authority'. Therefore, we do not find any substance in the stance taken by the petitioner that it is not a 'public authority'

13. Careful perusal of the documents in conjunction with the definition of 'public authority' and the contentions of either side, this Commission holds that the respondent is a 'public authority' and for the aforesaid reasons the following order with consequential directions is passed. So, far as the remaining relief in the application cannot be granted for the reason that there is no PIO being appointed under section 5 of the RTI Act and that there is no contravention of any of the clauses under Section 18(1) of the RTI Act and that section 20 of the RTI Act cannot be invoked. For arguments sake, even if it is presumed that there was PIO, in the light of the decision of Hon'ble Supreme Court of India in Civil Appeal Nos.10787-788 of 2011 dated 12.12.2011 no direction could be issued to furnish information in the complaints filed under Section 18(1) of the RTI Act.

14. In the result the following order is passed.

ORDER

- 1) Complaint is disposed of.
- 2) The Commission after perusal of the documents and the provisions of the RTI Act has found that Bangalore Turf Club is a 'public authority' as per the definition under section 2(h) (d) (ii) of the RTI Act.
- 3) By exercising powers under Section 25(5) of the RTI Act, the Commission calls upon the Bangalore Turf Club to appoint a PIO and First Appellate Authority by issuing notification within three months from to-day.
- 4) The Secretary to Government, D.P.A.R., Government of Karnataka, which is having control and supervision over Bangalore Turf Club, Bangalore, is directed to take steps and see that the Bangalore Turf Club notifies appointing



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a SPIO, APIO and First Appellate Authority within three months from to-day.

- 5) The petitioner is at liberty to approach the PIO of Bangalore Turf Club to be appointed, by way of fresh application under section under Section 6(1) of the RTI Act, if desires to seek information.
- 6) The petitioner is also at liberty to approach the First Appellate Authority of the Bangalore Turf Club, to be appointed within the period stated above, as per Section 19(1) of the RTI Act and thereafter he may approach this Commission under Section 19(3) of the Act, if warranted.
- 7) The Secretary, Bangalore Turf Club, Bangalore and The Secretary to Government, D.P.A.R., Government of Karnataka, to report about appointing a PIO and First Appellate Authority on or before 30.9.2013.
- 8) This case is adjourned 11.9.2013 for receiving the compliance report from the respondent and the Secretary to Government, D.P.A.R., Government of Karnataka.

This order is dictated to the Judgment Writer, transcribed by him, corrected and then pronounced in the Open Court on this the 1st day of July 2013.

11/7/2013
(Sri J S Virupakshaiah)
State Information Commissioner

Addresses of Parties:

KIC 3498 PTN 2012	BY RPAD	KIC 3498 PTN 2012
Sri.Nirmal Prasad, Secretary, Bangalore Turf Club, No.5038, Race Course Road, Bangalore-1		Sri.S.Umapathi, No.1, Tirumala Nivas, Kirloskar Layout, Hesaraghatta Main Road, Bangalore-73
KIC 3498 PTN 2012	BY RPAD	
The Secretary to Government, D.P.A.R., Government of Karnataka, Vidhana Soudha, Bangalore		

